

## Internal Revenue Service

Department of the Treasury  
Washington, DC 20224

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Refer Reply To:  
CC:CORP:B05  
PLR-109038-11  
Date:  
June 03, 2011

TY:

Legend

Foreign Parent =

Parent =

Sub 1 =

Sub 2 =

Sub 3 =

Sub4 =

Sub5 =

Sub6 =

Date1 =

Date2 =

Date3 =

Date4 =

Year1 =

x% =

y% =

Tax =

Preparer =

Officer =

Dear :

This letter responds to your request, dated February 24, 2011, as submitted by your authorized representatives on behalf of Parent, requesting a ruling under Treas. Reg. § 1.1502-75(b)(3) that Sub4 has joined in the making of the initial consolidated return filed by Parent for the taxable year ending Date4. The information submitted in that request and in later correspondence dated March 21, May 9, and June 3, 2011, is summarized below.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

### **Facts**

Foreign Parent owns 100% of Parent and owned 100% of Sub1, Sub2, Sub3, and Sub4. Parent owned 100% of Sub 5. Parent, Sub1, Sub2, Sub3, Sub4, and Sub5 are domestic corporations that use an accrual method of accounting. Parent, Sub1, Sub2,

Sub3, and Sub5 have an annual accounting period that is a calendar year. Sub4 had an annual accounting period that was a fiscal year ending Date1.

On Date2, Foreign Parent transferred all of its stock in Sub1, Sub2, Sub3, and Sub4 to Parent. On Date3, Parent purchased x% of Sub6 stock. The remaining y% of Sub6 stock continues to be owned by individuals. Sub6 is a domestic corporation that uses an accrual method of accounting and has an annual accounting period that is a calendar year.

Parent engaged Tax Preparer to file a consolidated Federal income tax return in lieu of separate returns for itself and its subsidiaries for the taxable year ending Date4. Tax Preparer filed Form 1120 for the taxable year ending Date4, which included Form 1122 (Authorization and Consent of Subsidiary Corporation To Be Included in a Consolidated Return), Form 851(Affiliations Schedule), and all items of income and deduction for Sub1, Sub2, Sub3, Sub5, and Sub6. Sub4 was omitted.

Based on Foreign Parent's failure to inform Parent's Officer that Sub4 stock had been transferred along with Sub1 through Sub3 stock, Officer did not inform Tax Preparer that Sub4 was a subsidiary of Parent. The failure of Sub4 to join in the making of the consolidated return was due to a mistake of fact, or to inadvertence. After the omission was discovered, Tax Preparer filed a return for Sub4 for its taxable year ending Date2. Sub4 did not file a separate Federal income tax return for the taxable year ending Date4 or thereafter.

### **Representations**

- (a) Parent and each of Sub1 through Sub6 were eligible to file a consolidated Federal income tax return for the taxable year ending Date4.
- (b) For the taxable year ending Date4, Parent owned directly stock meeting the requirements of section 1504(a)(2) in Sub1 through Sub6.
- (c) The omission of Sub4 from the initial consolidated return for Parent's group was not motivated by tax avoidance or tax planning.
- (d) None of Parent's acquisitions of Sub1 through Sub6 constituted a reverse acquisition under § 1.1502-75(d)(3).

### **Law**

Section 1.1502-75(a)(1) provides that a group which did not file a consolidated return for the immediately preceding taxable year may file a consolidated return in lieu of separate returns for the taxable year, provided that each corporation which has been a member during any part of the taxable year for which the consolidated return is to be filed consents (in the manner provided in § 1.1502-75(b)).

Section 1.1502-75(b)(1) provides that the consent of a corporation referred to in

paragraph (a)(1) of this section shall be made by such corporation joining in the making of the consolidated return for such year. A corporation shall be deemed to have joined in the making of such return for such year if it files a Form 1122 in the manner specified in § 1.1502-75(h)(2).

Section 1.1502-75(b)(2) provides that if a member of the group fails to file Form 1122, the Commissioner may under the facts and circumstances determine that such member has joined in the making of a consolidated return by such group. The circumstances, among others, that will be taken into account in making this determination include: (i) Whether or not the income and deductions of the member were included in the consolidated return; (ii) Whether or not a separate return was filed by the member for that taxable year; and (iii) Whether or not the member was included in the affiliations schedule, Form 851.

Section 1.1502-75(b)(3) provides that if any member has failed to join in the making of a consolidated return under either §§ 1.1502-75(b)(1) or (b)(2), then the tax liability of each member of the group shall be determined on the basis of separate returns unless the common parent corporation establishes to the satisfaction of the Commissioner that the failure of such member to join in the making of the consolidated return was due to a mistake of law or fact, or due to inadvertence. In such case, such member shall be treated as if it had filed a Form 1122 for such year for purposes of § 1.1502-75(h)(2), and thus joined in the making of the consolidated return for such year.

Section 1.1502-75(h)(2) provides that if, under the provisions of § 1.1502-75(a)(1), a group wishes to file a consolidated return for a taxable year, then a Form 1122 (Authorization and Consent of Subsidiary Corporation To Be Included in a Consolidated Income Tax Return) must be executed by each subsidiary. For the taxable years to which this ruling is relevant, the group must attach either executed Forms 1122 or unsigned copies of the completed Forms 1122 to the consolidated return. If the group submits unsigned Forms 1122 with its return, it must retain the signed originals in its records in the manner required by § 1.6001-1(e). Form 1122 is not required for a taxable year if a consolidated return was filed (or was required to be filed) by the group for the immediately preceding year.

### **Ruling**

Based solely on the information submitted and the representations made, we rule that Sub4 will be treated under § 1.1502-75(h)(2) as if it had filed a Form 1122 with Parent's consolidated Federal income tax return for the taxable year ending Date4, and thus Sub4 will be treated as having joined in the making of the consolidated return for such year. § 1.1502-75(b)(3).

Within 45 days of the date of this letter, Parent shall file an amended consolidated return for the taxable year ending Date4 (and any necessary subsequent years) to

include Sub4 on Parent's Form 851 and to include a Form 1122 and any necessary statements and schedules for Sub4.

### **Procedural Statements**

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter. Specifically, no opinion is expressed or implied concerning whether or not any acquisition qualifies as a reverse acquisition under § 1.1502-75(d)(3).

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

A copy of this letter must be attached to any income tax return to which it is relevant. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their return that provides the date and control number of the letter ruling.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

Sincerely,

Rebecca O. Burch  
Rebecca O. Burch  
Assistant Branch Chief, Branch 5  
Office of Associate Chief Counsel  
(Corporate)

cc: